

From: [Molly Garner](#)
To: [Kourtney Romine](#); [Michael Christian \(mike@smithmalek.com\)](#); [Fugate, Kristina](#); [External - Joy M. Vega](#)
Cc: [James Piotrowski](#)
Subject: Response of Non-Consenting Owners & CAIA to SROGs Opening Brief Dkt CC-2021-OGR-01-001
Date: Friday, June 11, 2021 04:37:34 PM
Attachments: [CAIA Resp to SROG Opening Brief 06-11-21.pdf](#)

Please find the attached for filing in Dkt. No. CC-2021-OGR-01-002, submitted on behalf of CAIA and Certain Non-Consenting Owners:

- Response to Snake River Oil And Gas's Opening Brief

Thank you,

-Molly Garner
Office Manager
Piotrowski Durand, PLLC

James Piotrowski, ISB # 5911
Marty Durand, ISB # 5111
PIOTROWSKI DURAND, PLLC
1020 W. Main St., Suite 440
P.O. Box 2864
Boise, ID 83701
Telephone: (208 331-9200
Facsimile: (208) 331-9201
james@idunionlaw.com
marty@idunionlaw.com

BEFORE THE IDAHO DEPARTMENT OF LANDS

In the Matter of the Application of Snake)	Docket No. CC-2021-OGR-01-002
River Oil and Gas, LLC for Spacing Order)	
Consisting of the E 1/2 of the SE ¼ of)	RESPONSE OF NON-CONSENTING
Section 9, SW 1/4 of Section 10, N 1/2 of)	OWNERS AND CAIA TO SNAKE RIVER
the N 1/2 of the NW 1/4 of Section 15, and)	OIL AND GAS'S OPENING BRIEF
the N 1/2 of the NE 1/4 of the NE 1/4 of)	
Section 16, Township 8 North, Range 5)	
West, Boise Meridian, Payette)	
County, Idaho)	
_____)	

COMES NOW Dale Verhaeghe, Linda Dernoncourt, Sharon Simmons, Alan and Glenda Grace, Edward and Cheryl Adair, William and Roxie Tolbert, Wendell and Normal Nierman, Cheryl and Richard Addison, Jimmie and Judy Hicks, Antonio and Danielle Anchustegui, Philip and Kathleen Hendrickson, Dawna and George Jackson, Karen Oltman, Bonnie McGehee and Citizens Allied for Integrity and Accountability, by and through counsel of record and hereby submit their response to the opening brief of Snake River Oil and Gas regarding the appropriate factors to be addressed or considered in determining whether proposed terms of compelled lease are just and reasonable.

I. The Administrator is Properly Following the Procedure Established by the Commission for This and Similar Cases.

Snake River Oil and Gas (“SROG”) is a for-profit business entity that hopes to earn substantial profits for its shareholders/owners. In light of this profit motive it should not be surprising that SROG will advocate for its own profits by attempting to shortchange the deliberative process established by the Idaho Oil and Gas Conservation Commission (“IOGCC” or “Commission”). Its complaints in regard to this process, however, are both factually inaccurate and addressed to the wrong decision maker.

Following the decision of the District Court in *CAIA v. Schultz* the IOGCC undertook to answer the question of how to satisfy the particular errors of law found by the District Court as it moved forward to hear and decide applications for spacing units and integration orders. In its decision, familiar to the Administrator, the IOGCC directed the Administrator and the parties go utilize the process currently under way with respect to this particular integration application. While SROG’s frustration at not being able to more immediately start generating dividends for its owners is understandable, it is misplaced. The Administrator is following the procedure established by the Commission. Complaints about that procedure are not within the purview of this proceeding, nor could the Administrator modify that procedure given that in such matters he is subject to the Commission’s decision making authority.

But in addition to being misplaced in this proceeding, SROG’s arguments are factually incorrect. SROG suggests that the arguments raised by CAIA and a collection of 23 mineral rights owners are identical to arguments that were raised in Case No. CC-2021-OGR-01-001. This is simply not true. The arguments are similar, and there is considerable overlap, but the arguments raised in CAIA’s opening brief are tailored to the particulars of this application, while

the arguments raised in that case were tailored to the particulars of that application. While SROG has no responsibility to read CAIA's briefs with the care sufficient to distinguish fine differences, the Administrator does have such a responsibility. CAIA and its members have striven to meet the demand of the Commission that just and reasonable factors be particularized to each case and is attempting to help the Administrator in likewise meeting that command.

II. The Purposes of the Idaho Oil and Gas Conservation Act are Multifold, and None Should be Ignored.

Snake River Oil and Gas's single minded focus on producing the greatest volume of hydrocarbons possible is consistent with its own profit motive, but is not consistent with the express purposes of the Idaho Legislature in passing the Oil and Gas Conservation Act. The Legislature has made clear that the greatest "economic recovery" is one of the goals of the Act. I.C. §47-311. But "economic recovery" necessarily means recovery that makes economic sense. The Legislature never intended that recovery of hydrocarbons that imposes economic losses on "land owners, royalty owners. . . and the general public" be pursued. *Id.* Instead, the Legislature made clear that the goal of the Act is to achieve the "greatest possible good" for all citizens and owners, not merely the greatest possible recovery for SROG. *Id.*

The focus on pursuing only economically positive recovery of gas and oil is reflected in the insistence of the Legislature that the Commission the Administrator and the Department pursue and approve only economically feasible production is made clear by the use of the word "economic" in the statement of purpose, I.C. §47-311. That restriction, to achieving only "economic production," is entirely consistent with the due process requirement that when compelling the sale of property at a state-established price, the seller may not be compelled to incur a loss or to suffer the diminution of their reasonable expectations in making their

investment. See Opening Brief, p. 8. One result of this command is that the Administrator may not focus purely on gross production of gas and oil. He must instead consider the net outcome of any terms a producer attempts to impose. If the net result of integration is to cause some, even one, mineral rights owners to suffer a net loss (royalties received minus external costs imposed), the terms cannot be considered just and reasonable as to those owners. The “economic” development of oil and gas resources may be required, but uneconomic development cannot be imposed on unwilling mineral owners.

III. Ensuring the Integration Order is on Just and Reasonable Terms Requires More Than Merely Ensuring Snake River’s Legal Compliance.

Snake River also objects to any attempt to ensure that it follows the law, as well as claiming that any effort to make it do any more than bare compliance with the law is somehow prohibited. The reality is that the Administrator is directed, as a matter of statute, both to faithfully enact and enforce the laws of the State of Idaho, AND to ensure that terms are just and reasonable. If just and reasonable is reduced to nothing more than legal compliance, then the words would be rendered meaningless. While legal compliance is necessary and is the proper purview and jurisdiction of the Department, Commission and Administrator, the requirement to ensure just and reasonable terms is necessarily in addition to or above and beyond mere legal compliance.

The factors proposed by all parties consist primarily of reasonable suggestions, even those proposed by SROG. The Administrator should consider including all of the proposed factors, to the extent that they do not directly conflict with each other. Where they conflict, the Administrator should decide which of the factors best serves the stated purposes of the Oil and

Gas Conservation Act to protect the interests of all parties, and not focus unduly on the profit interests of SROG.

Dated this 11th day of June, 2021.

PIOTROWSKI DURAND, PLLC

 /s/ James M. Piotrowski
James M. Piotrowski
Attorneys for CAIA and Certain Non-
Consenting Owners

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of June, 2021, I caused to be served a true and correct copy of the following item in Docket No: CC-2019-OGR-01-002: *SUBMISSION OF NON-CONSENTING OWNERS AND CAIA RE: FACTORS FOR ESTABLISHING JUST AND REASONABLE TERMS* by the method indicated below and addressed to the following:

Idaho Department of Lands	U.S. Mail	<input type="checkbox"/>
Attn: Mick Thomas	Hand Delivery	<input type="checkbox"/>
300 N. 6 th Street, Suite 103	Certified Mail	<input type="checkbox"/>
PO Box 83720	E-Mail	<input checked="" type="checkbox"/>
Boise, ID 83720		
kromine@idl.idaho.gov		

Snake River Oil and Gas	U.S. Mail	<input type="checkbox"/>
c/o Michael Christian	Hand Delivery	<input type="checkbox"/>
Smith & Malek, PLLC	Certified Mail	<input type="checkbox"/>
101 S. Capitol Blvd, Suite 930	E-Mail	<input checked="" type="checkbox"/>
Boise, ID 83702		
mike@smithmalek.com		

Kristina Fugate	U.S. Mail	<input type="checkbox"/>
Deputy Attorney General	Hand Delivery	<input type="checkbox"/>
PO Box 83720	Certified Mail	<input type="checkbox"/>
Boise ID 83720-0010	E-Mail	<input checked="" type="checkbox"/>
kristina.fugate@ag.idaho.gov		

Joy Vega	U.S. Mail	<input type="checkbox"/>
Deputy Attorney General	Hand Delivery	<input type="checkbox"/>
PO Box 83720	Certified Mail	<input type="checkbox"/>
Boise ID 83720-0010	E-Mail	<input checked="" type="checkbox"/>
joy.vega@ag.idaho.gov		

James Thum	U.S. Mail	<input checked="" type="checkbox"/>
Idaho Department of Lands	Hand Delivery	<input type="checkbox"/>
PO Box 83720	Certified Mail	<input type="checkbox"/>
Boise ID 83720-0050	E-Mail	<input type="checkbox"/>

_____/s/_____
James M. Piotrowski
James M. Piotrowski